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10/645,218

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06/13/2006

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EXAMINER

MAI, TRI M

ART UNIT

PAPER NUMBER

3727

DATE MAILED: 06/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/645,218

Applicant(s)

WILKINSON ET AL. ✓

Examiner

Tri M. Mai

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10 is/are rejected.
- 7) ☒ Claim(s) 8-9 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

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1. Claims 1-7, and 10 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6622858. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to eliminate the limitations when they are not desired. Furthermore, It would have been obvious to one of ordinary skill in the art to combine claims 3, 12, and 15 together to provide claim 1 as set forth in claim 1, and it would have been obvious to one of ordinary skill in the art to combine claims 3, 12, 15 and 17 together to provide claim 10 as set forth.

Regarding claim 2, although the conflicting claims 2 and 12 are not identical, they are not patentably distinct from each other because it would have been obvious to one of ordinary skill in the art to eliminate the limitations when they are not desired. Similarly, it would have been obvious to one of ordinary skill in the art to combine the various claims in 6622858 to provide the claims as set forth in claims 3-7.

2. Claims 2-5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tunis (4014436) in view of Cutler (646638). Tunis teaches a back panel, a hanging tab, a closing slot 13, a bottom support panel 24, and a front panel 17 with a tab 19.7. Tunis meets all claimed limitations except for the tab connecting to the bottom support panel. Cutler teaches that it is known in the art to provide tabs with a plurality of fold lines in a container. It would have been obvious to one of ordinary skill in the art to provide a tab with fold lines in Tunis as taught by Cutler to accommodate the contents.

With respect to the new limitations of the closing tab having a shape corresponding to the shape of the closing slot. It is noted that this limitation is broad. It is noted that as disclosed, the

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tab 63 has an exaggerated shape corresponding to the shape of the closing slot 25. Similar to that of applicant's, the tab at portion 19.7 in Tunis having a shape corresponding to the shape of the closing slot at 13.

Note that portion 22 is part of the garment as claimed. With respect to the folding support panel, the limitation does not impart any structure over the combination of Tunis in view of Cutler since the claim is directed to a package, and the combination of Tunis in view of Cutler meets the final condition of the package as claimed.

Regarding claim 4, it would have been obvious to one of ordinary skill in the art to provide at least 3 fold lines as taught by Cutler to vary the size of the package.

Regarding claim 5, front panel is less than the length of the back panel as claimed, and the garment is exposed below the front panel for display.

3. Claims 2-3, 5 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakley (6032793) in view of Tunis, and further in view of either Tuttle et al. (2755924) or Usui (5791470). Oakley teaches a garment display package with back panel 114, a hanging tab 122, a bottom support panel 112, and a front panel 132. Oakley meets all claimed limitations except for 1) the closing slot in the back panel for engaging with a tab on the front panel, and 2) the connecting tab on the bottom support. Tunis teaches that it is known in the art to provide an attachment with a slot 13 and a tab 19.7. It would have been obvious to one of ordinary skill in the art to provide a closing slot in the back panel for engaging with a tab on the front panel in Oakley as taught Tunis to provide an alternate attachment means.

With respect to the tab on the bottom support, either Tuttle or Usui teaches that it is known in the art to provide a tab (12, 30, respectively) with fold lines (13, 14; 16, 18

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respectively). It would have been obvious to one of ordinary skill in the art to provide a tab with an additional fold line in Oakley as taught by either Tuttle or Usui to accommodate the size of the contents.

4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over either the Tunis or Oakley rejections in paragraphs 5 and 6, and further in view of Russell (4190151). The modified package of Oakley meets all claimed limitations except for the J-shape hanging tab. Russell teaches that it is known in the art to provide a J-shape hanging tab. It would have been obvious to one of ordinary skill in the art to provide a J-shape hanging tab in as taught by Russell to provide an alternate hanging device.

5. Claim 8-9 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Applicant's arguments have been fully considered but they are not persuasive. With respect to the double patenting rejection. As set forth above, the amended claims do not overcome the double patenting rejections. These new limitations are taught by various claims of 6622858. Furthermore, it would have been obvious to one of ordinary skill in the art to combine various dependent limitations together when combinations are desired.

With respect to the new limitations of the closing tab having a shape corresponding to the shape of the closing slot in claim 2. It is noted that this limitation is broad. It is noted that as disclosed, the tab 63 has an exaggerated shape corresponding to the shape of the closing slot 25. Similar to that of applicant's, the tab at portion 19.7 in Tunis having a shape corresponding to the shape of the closing slot at 13.

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7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri M. Mai whose telephone number is (571)272-4541. The examiner can normally be reached on 7:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Tri M. Mai
Primary Examiner
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